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CLERK OF SUPERIOR COURT
YUMA, ARIZONA 85369

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YUMA

In the Matter of:

MERIT-STEP PAY INCREASES FOR
ELIGIBLE EMPLOYEES WITHIN THE
JUDICIAL MERIT SYSTEM OF YUMA
COUNTY, ARIZONA, FOR FISCAL YEARS
97-98 AND 98-99.

Administrative Order
No. 98-09

As Presiding Judge of the Yuma County Superior Court,
the undersigned makes the following findings and conclusions:

1. In accordance with the laws of the State of Arizona,
the Chief Justice of the Supreme Court of the State of Arizona
has delegated to the presiding judges of the Superior Court the
authority and responsibility to exercise general supervision over
all superior court employees and to establish judicial branch
personnel systems within each county. (See Arizona Supreme Court
Administrative Rule V-A.) Arizona case law provides that the
presiding judge of the Superior Court in a county has the power
to hire, fix the salaries of, supervise and terminate court
employees. The county board of supervisors may not disapprove
the court's order for salaries unless it is established that the
presiding judge acted arbitrarily and unreasonably.
Correspondingly, the county has a ministerial duty to approve the

1 presiding judge's order fixing salaries unless the county can
2 establish that the presiding judge acted unreasonably,
3 arbitrarily or capriciously.

4 2. No later than July 11, 1989 (effective July 1, 1989),
5 the "Judicial Merit System" was adopted and implemented in Yuma
6 County, Arizona. Included within, and covered by, the "Judicial
7 Merit System," were the employees and personnel of the Yuma
8 County Superior Court, the Juvenile Division of the Yuma County
9 Superior Court and both the Adult and Juvenile Probation
10 Departments of the Yuma County Superior Court. (See
11 Administrative Order 89-7, dated July 11, 1989, executed by Hon.
12 Douglas W. Keddie, as the then Presiding Judge of the Yuma County
13 Superior Court and its Juvenile Division.)

14 3. Effective June 14, 1990, with concurrence of the Clerk
15 of the Court, the office of the Clerk of the Yuma County Superior
16 Court, and all of its personnel, were placed within the "Judicial
17 Merit System" as previously adopted by Administrative Order 89-7.
18 (See also Administrative Order 90-23.)

19 4. On July 9, 1990, at a public meeting of the Yuma County
20 Board of Supervisors, Hon. Douglas W. Keddie informed this Board
21 that he had previously informed the Administrative Office of the
22 County that the Yuma County Superior Court and its departments
23 were not a part of the Yuma County personnel system, that it was
24 not a part of the HayGroup study, that it would not be bound by
25 such study nor affected by it, although the Superior Court would
26 cooperate with the study and consider its findings when and if
27 they were rendered. (See Administrative Orders 90-16 and 90-18,
28 dated July 20, 1990.)

1 5. The "Judicial Merit System" and the "Rules and
2 Guidelines of the Judicial Merit System for Classified and
3 Unclassified Employees of the Superior Court System in Yuma
4 County" have been supplemented and amended from time to time
5 since July 11, 1989. (See Administrative Orders 91-3, 92-2, 92-
6 3, 92-11, 92-12, 94-5, 94-17, 95-08 and 95-09.)

7 6. Employees and personnel within the "Judicial Merit
8 System" are hired and retained with the expectancy of working
9 under the employment conditions and receiving the benefits
10 (including the "Pay Plan") provided for by the "Judicial Merit
11 System."

12 7. The "Pay Plan" of the "Judicial Merit System" provides,
13 among other things, the following:

14 "12.05 Performance/Step Increases

15 A. Nature: The Judicial Merit
16 System uses a system which
17 establishes pay grades for each
18 class, with incremental step
19 increases based on performance and
20 longevity. Step increases should
21 be preceded by a performance
22 evaluation to demonstrate adequate
23 performance of duties and
24 responsibilities. A step increase
25 is not a right of an employee, but
26 is a salary increase tied to job
27 performance and time on the job.
28 The appointing authority will have
 exclusive authority to approve step
 increases.

23 B. Step Increase Eligibility: An
24 employee shall become eligible for
25 consideration of a step increase
26 from step one to step two after the
27 first six months of employment, to
28 step three after the first year of
 employment, to step four after the
 first two years of employment, and
 to further step increase every two
 years thereafter. Step increases
 can be withheld up to 180 days, if

1 the employee's performance
2 evaluation indicates corrective
3 action is needed, and/or a step
4 increase is not meritoriously
5 deserved. Subsequent step
6 increases, if meritoriously
appropriate, will be based on the
end of the extended period for the
withheld step increase, not on the
employee's hiring anniversary
date."

7 8. At the written request of the undersigned Presiding
8 Judge, merit-step increase were paid to eligible court employees
9 within the "Judicial Merit System" for Yuma County during the
10 fiscal year 97-98. (See correspondence between the Presiding
11 Judge and the Board of Supervisors dated August 15 (sic), 1997
12 [probably August 18, 1997], August 22, 1997, August 25, 1997, and
13 the records of the Yuma County Finance and Treasurer's offices,
14 which by this reference are incorporated in and made a part of
15 this Administrative Order.)

16 9. For fiscal year 98-99, the departments covered by the
17 "Judicial Merit System" timely submitted to the Yuma County Board
18 of Supervisors requested budgets for fiscal year 98-99. Each of
19 those requested budgets reasonably requested merit-step increases
20 for certain eligible employees within each department.

21 10. Under date of May 4, 1998, Yuma County Administrator,
22 Wally Hill, submitted to the Board of Supervisors the fiscal year
23 98-99 budget as recommended by the County Administrator. The
24 County Administrator reported that the County's financial
25 condition was good and was strengthening. The County
26 Administrator also recommended a 3% across-the-board cost of
27 living pay increase for all county and court employees.

28 The County Administrator stated that since the County

1 would be implementing a new pay for performance system next
2 fiscal year, no funding for merit or step increases in the 98-99
3 "transition" year would be recommended. (It should be noted that
4 the old general Yuma County personnel system was somewhat similar
5 to the "Judicial Merit System" of the Superior Court and its
6 departments.)

7 Further, the County Administrator recommended excluding
8 the step increases conferred within the Superior Court functions
9 during the prior fiscal year 97-98 in calculating salary
10 requirements for fiscal year 98-99.

11 The report of the County Administrator dated May 4,
12 1998, and the fiscal year 98-99 line item recommended budgets as
13 reviewed, considered, and presented to the Board by the County
14 Administrator for their considerations during the 98-99 budget
15 hearings, are by this reference made a part of this
16 Administrative Order. Similarly, the minutes, records, and tape
17 recordings of relevant Board meetings and work sessions are by
18 this reference made a part of this Administrative Order.

19 11. On May 11, 1998, the Yuma County Superior Court
20 departments within the "Judicial Merit System" presented their
21 respective requested budgets to the Yuma County Board of
22 Supervisors.

23 At the outset of that meeting, the undersigned, as
24 Presiding Judge, again informed the Board that the Yuma County
25 Superior Court and its departments were not a part of the Yuma
26 County personnel system, that it was not a part of the new pay
27 for performance study, that it would not be bound by such study
28 nor affected by it, although the Superior Court would cooperate

1 with the study and consider its findings when and if they were
2 finally rendered.

3 The undersigned objected, and voiced his concern,
4 regarding the criteria for evaluating performance of employees
5 under the new pay for performance system and for funding the
6 various agencies and departments of Yuma County. Specifically,
7 concern was expressed that such evaluation and funding included
8 items such as: a perceived importance of the departments and
9 their employees; a perceived value ("bang for the buck") of the
10 departments and their employees; and whether the department came
11 in under budget during the preceding fiscal year.

12 (It is also the understanding of the undersigned that
13 specific legislation may be necessary to enable the Board to
14 implement the new pay for performance plan which is being
15 contemplated.)

16 The undersigned also respectfully objected to the
17 County Administrator's recommendations that the funding for the
18 cost of the 97-98 employee merit pay increases be deducted from
19 the requested budgets of the Yuma County Superior Court
20 departments and his recommendation that merit pay increases for
21 such eligible employees also be excluded from the 98-99 budget.

22 12. On June 1, 1998, the undersigned Presiding Judge
23 supplemented the above concerns to the Board by way of written
24 correspondence approved and supported by all of the Yuma County
25 Superior Court judges, the Clerk of the Court, the Court
26 Administrator, the Chief Adult Probation Officer and the Juvenile
27 Court Director. The letter from the undersigned to the Board
28 dated June 1, 1998, is by this reference incorporated in and made

1 a part of this Administrative Order.

2 13. Notwithstanding the requests and objections of the
3 undersigned, the Yuma County Board of Supervisors, on June 8,
4 1998, adopted a tentative budget for fiscal year 98-99 which
5 followed the recommendation of the County Administrator and which
6 excluded and deducted from the 98-99 budgets of the Superior
7 Court and its departments the amount of the merit pay increases
8 already paid to eligible employees within the "Judicial Merit
9 System" during the 97-98 fiscal year.

10 The tentative budget as adopted also failed to approve
11 and include amounts needed to pay eligible "Judicial Merit
12 System" employees their performance-step pay increases during
13 fiscal year 98-99.

14 14. In the fiscal year 1998-99 tentative budget, the Board
15 of Supervisors approved a three (3%) percent cost of living
16 increase for all general county employees and court employees.
17 Consistent with historical practices, with approval of the
18 Judicial Management Team, and by way of Administrative Order 98-
19 08, effective July 1, 1998, a three (3%) percent cost of living
20 pay increase adjustment for employees within the "Judicial Merit
21 System" has been ordered by the undersigned Presiding Judge.

22 15. The Yuma County Board of Supervisors held a public
23 hearing of on June 22, 1998, for purposes of discussing matters
24 relating to the 1998-99 tentative budget. At that meeting they
25 amended the tentative budget so as to transfer sufficient funds
26 from a "contingency fund" so as to fund the amounts previously
27 deducted from the 1998-99 budgets of the Superior Court and its
28 departments for the merit pay increases already paid to eligible

1 employees within the "Judicial Merit System" during the 97-98
2 fiscal year and so as to fund the requested merit pay increases
3 for the fiscal year 1998-99.

4 However, at the same public meeting, the Board of
5 Supervisors reversed its previous decision, which approved a
6 three (3%) percent cost of living increase for all general county
7 employees and court employees, and eliminated the same from the
8 tentative budget for fiscal year 1998-99, but only as the same
9 related to court employees, i.e., employees covered by the
10 "Judicial Merit System."

11 16. The Yuma County Board of Supervisors has failed to
12 perform its ministerial duty of approving the foregoing
13 reasonable salary requests which have been granted and which are
14 reasonably and legally expected by the eligible employees within
15 the Yuma County Superior Court "Judicial Merit System."

16 For the foregoing reasons,

17 IT IS THEREFORE ORDERED that the Yuma County Board of
18 Supervisors shall, in the final budget to be adopted for the
19 fiscal year 1998-99, add to the tentative budgets approved for
20 the Yuma County Superior Court and its departments within the
21 "Judicial Merit System" increased and sufficient budgeted funds
22 for the following purposes:

23 a. So as to reinstate the 97-98 merit-step increases
24 wrongfully excluded from the tentative budget; and

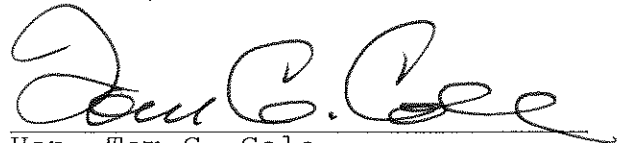
25 b. So as to reinstate the 98-99 merit-step increases
26 for eligible "Judicial Merit System" employees wrongfully
27 excluded from the tentative budget.

28 c. So as to reinstate the three (3%) percent cost of

1 living increase for employees covered by the "Judicial Merit
2 System" which had been previously approved by the Board and which
3 was the subject matter to Administrative Order 98-08.

4 IT IS FURTHER ORDERED that the Yuma County Board of
5 Supervisors shall, after the adoption of such a final budget
6 which has added to the budgets of the Yuma County Superior Court
7 departments sufficient funds for the above purposes, direct the
8 Yuma County Administrator and the Yuma County Finance Director to
9 take such steps and do such things as are reasonably necessary to
10 carry out and give effect to this Order.

11 DATED this 22nd day of June, 1998.

12 
13

14 Hon. Tom C. Cole
PRESIDING JUDGE

15 Copies to:

16 Beverly Frame, Clerk of the Superior Court
17 Steve Gallaher, Court Administrator
18 Hon. Thomas A. Thode
19 Hon. Philip L. Hall
20 Hon. Kirby Kongable
21 Hon. John N. Nelson
22 Martin J. Krizay, Chief Adult Probation Officer
23 Yuma County Board of Supervisors
24 Wally Hill, County Administrator
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